UNITED COCONUT OIL MILLS INC.

v.

INDIAN OVERSEAS BANK & ORS.

HIGH COURT, SINGAPORE
TS SINNATHURAY J
[SUIT NO. 4755 OF 1983]
8 MAY 1991

CONTRACT: *Sale and purchase - Irrevocable letters of credit - Terms and conditions - Certificate of analysis - Refusal to accept documents evidencing shipment - Breach - Expert witnesses - Convention - Tests of disconformity - Uniform Customs & Practise for Documentary Credit [Sing] Rules, Articles 7, 8. 32(c).*

In April 1981 the third defendant D3, a company in Singapore, agreed to purchase from the plaintiffs, U, a Philippine company, 5,000 metric tons of Cochin coconut oil, f.o.b., Philippines for shipment in the first half of August 1981.

On 6 May 1981 the first defendant D1, a bank, on D3's instructions opened two confirmed irrevocable letters of credit (the LCs) in favour of U.

The LCs required that a certificate of analysis be issued by an independent laboratory certifying that the oil was free from contamination and sea water indicating free fatty acid. The LCs were later varied to extend the shipping date.

On 16 and 17 September 1981, U presented to 2 Philippine banks, the documents for transmission to D1 in respect of the shipment of the coconut oil under the LCs together with drafts for various amounts; these documents were not accepted by D3 as the required certificates of analysis were not enclosed.

D1 was advised that the certificates of analysis issued by RJ Del Pan & Co. (the Del Pan certificates) were in the documents. These certificates were not accepted by D3. As a result, another set of documents were issued by Camino (Camino certificates) in the form of laboratory reports. D1 advised the Philippines banks that the documents were rejected as the certificates did not comply with the LCs.

The plaintiff claimed against D1 for breach of its obligations and undertakings under the letter of credit on the grounds that D1 had wrongfully refused to accept the documents evidencing the shipment and had refused to make any payment under the LCs to U.

D1 alleged that U's documents relating to the shipment of coconut oil had failed to conform with the terms and conditions of the letter of credit established by them or with the Uniform Customs & Practice for Documentary Credit (UCP Rules).

U also raised issues of estoppel by reason of previous course of dealing and estoppel by waiver by reason of D1's objections after the expiry date for negotiations of the documents.

Held:

[1] The Del Pan certificates were not from an independent laboratory as required under the contract and it was therefore not permissible for U to present these documents to D1 when what was required were certificates of analysis.

[2] The Camino Certificates were "Certificates of Analysis" issued by an independent laboratory as

(a) according to the independent evidence of an expert witness on banking practice and the view of a trader who traded substantially in tropical oil, the shipment of coconut oil had been analysed in the manner required by the LCs and strictly conformed to the contract;

(b) further this "Result of Analysis" had in fact been certified by Camino, the chemical engineer authorised to give certificates of analysis. Also, D1 had accepted Camino Certificates as Certificates of Analysis;

(c) the inclusion of the word "Philippine" was additional information which did not affect the validity of the documents; further, there was evidence that under Article 32(c) of the UCP Rules, the word "Philippine" was acceptable as the commercial invoices in this case all referred to the goods shipped in exact conformity with the requirements of the LCs. The words "Philippine Crude Coconut Oil" and "Philippine Cochin Type of Coconut Oil" as stated in the Camino certificates are not inconsistent with the requirements in the LCs;

(d) the reference to FFA "as oleic" was not wrong as they conformed to the letters of credit.

[Judgment for the plaintiffs.]

Cases referred to:
Rayner v. Hambro's Bank Ltd. [1943] 1 KB 37 ***(dist)***
Bank Melli Iran v. Barclays Bank [1951] LLLR Vol 2 367 ***(dist)***
Midland Bank v. Seymour [1955] LLLR Vol 2 147 ***(dist)***
Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty. Ltd. [1973] AC 279 ***(dist)***
Overseas Union Bank Ltd. v. Chua Teng Hwee [1964] 30 MLJ 165 ***(dist)***

Legislation referred to:
Uniform Customs and Practice for Documentary Credit (1974 Revision) [Sing], arts. 7, 8, 32(2)

Other sources referred to:
Documentary Letters of Credit, p. 279, E P Ellinger

For the plaintiffs - John Thomas QC (Michael Kuah with him)
For the 1st defendants - C S Wu (Lim Teng Leong with him)
For the 2nd defendants - Anthony Clarke QC (Hiew Hin Chung & Nicholas Woo with him)

JUDGMENT

TS Sinnathuray J:

The plaintiffs (Unicom) are a Philippine corporation engaged in the production, processing, sale and export of coconut oil and related products.

The 1st defendants (IOB) are a banking corporation organised and existing under the laws of Singapore

The 2nd defendants (Uemura), a Japanese corporation, were at the material time the owners of several vessels including the vessel, the Rich Star. They defended the claim against them, but in the course of the trial, Counsel for the parties came to an agreement that the claim of Unicom against IOB be determined prior to the claim by Unicom against Uemura, and Uemura ceased to take any further part in the trial.

The 3rd defendants (Patel), a corporation organised and existing under the laws of Singapore, were at the time of the hearing of the action already in liquidation. Counsel for Unicom in opening the case said that Patel were not proceeding with their defence and counterclaim.

With this introduction, it can now be said the relevant facts relating to the issues before me were substantially not in dispute. These facts are taken from the statement of facts tendered by Mr. Thomas QC for Unicom. Mr. Wu for IOB accepted the facts stated therein, except those that concerned the Rich Star and Uemura.

By an agreement in a letter dated 25 April 1981 from Patel to Unicom and a telex dated 27 April 1981 from Patel to Unicom, Patel agreed to purchase from Unicom 5,000 metric tons of cochin coconut oil, f.o.b Philippines, at a price of US$552.50 per metric ton for shipment in the first half of July 1981.

By a further agreement in the same letter and telex, Patel agreed to purchase from Unicom 5,000 metric tons of crude coconut oil, f.o.b. Philippines, at a price of US$497.50 per metric ton with the option to convert to cochin type coconut oil at a premium of US$55 per metric ton, for shipment at the end of July/first half of August 1981.

Pursuant to the said agreements, Patel instructed IOB to open two irrevocable letters of credit. On 6 May 1981, IOB opened a confirmed irrevocable letter of credit no. PM 110681 in the sum of US$2,762,000 in favour of Unicom. And, on 19 May 1981, IOB opened the other irrevocable letter of credit no. PM 120281 in the sum of US$2,762,000 in favour of Unicom.

With regard to the terms and conditions stipulated in the letters of credit, I need only refer to Clause 4 under the heading “special instructions”. It states as follows:

> Special Instructions
>
> (4) A certificate of analysis in triplicate issued by independent laboratory certifying the oil to be free from contamination and sea water showing the following specifications:
>
> | | | |
> |---|---|---|
> | (i) Cochin Type Coconut Oil: | | |
> | FFA (as Lauric Acid) | : | 0.1% max |
> | M and I | : | 0.1% max |
> | Colour in 5 1/4" Lovibond Cell | : | 1 Red max
10 Yellow max |
> | Iodine value | | 7 - 12 |
> | (ii) Crude Coconut Oil: | | |
> | FFA (as Lauric Acid) | : | 3% max |
> | M and I | : | 1% max |
> | Colour in 5 1/4" Lovibond Cell | : | 15 Red max
70 Yellow max |
> | Iodine value | : | 7 - 12 |

FFA, free fatty acid, it was explained at the hearing, is an acid that is found in almost all natural fats including coconut oil. The acid content is measured in terms of its lauric acid content and/or its oleic acid content.

There was a variation in the agreements made between Patel and Unicom in that on or about 25 August 1981, the two letters of credit were amended by extending the shipment date until 30 September 1981, and crucial to this case, the negotiation date was extended to 15 October 1981.

On 16 and 17 September 1981, Unicom presented to the United Coconut Planters Bank and the Philippine National Bank (the Philippine Banks) documents for transmission to IOB in respect of the shipment of the coconut oil on the Rich Star at the port of Davao, Philippines, under the letters of credit together with drafts for US$2,486,348.29, US$149,250 and US$597,420.98. *a*

On or about 22 September 1981, IOB deceived from the Philippine Banks the documents for the shipment at Davao, together with drafts for US$2,486,34829, US$149,25000 and US$597,420.96. IOB advised Patel of their receipt. *b*

On 24 September 1981, Patel wrote to IOB stating that the documents presented did not correspond with the letters of credit because no certificate of analysis as required under Clause 4 had been provided. That same day, IOB sent cables to the Philippines Banks stating that the certificates of analysis had not been included in the documents forwarded and asking for them. The reply IOB got was that the certificates of analysis issued by R J Del Pan & Co. were in the documents I reproduce below one of the Del Pan certificates: *c*

Report No. 81/9575-A_2 11 September 1981

DAV-1

Certificate of Analysis *d*

This is to certify that the undersigned registered Marine and Cargo Surveyors did, at the request of **United Coconut Oil Mills**., attend at Legoil-Davao, Sasa, Davao City, Philippines, on board the M/T "RICH STAR" Voy. No. 1 while loading a shipment of Philippine Cochin Type Coconut Oil In Bulk in the amount of 4,500.1779 metric tons on 7-11 September 1981 in order to sample the shipment from the Shipper's Shore Tank Nos. 4 & 5.

Samples were taken from Shipper's Shore Tank Nos. 4 & 5 before loading and a composite submitted to independent chemists Camino Chemicals, Inc. Lab., for analysis as required. *e*

Results as per Lab. Report by Camino Chemical, Inc. Lab. dated 11 September 1981, quoted as follows:

	Tank No. 4	*Tank No. 4*
FFA Oleic	0.1219%	0.1125%
FFA Lauric	0.0865%	0.0798%
Moisture & Impurites	0.069%	0.100%
Color, Lovibond 5 1/4"		
Red	0.6	0.6
Yellow	5.0	5.0
Iodine Value	8.33	8.44

f

The oil is free from contamination and sea water.

R J Del Pan & Co., Inc. *g*

Marine & Cargo Surveyors-Engineers

Tan R3344K1149-A-0

PTR A5244840

Sgd.

On 26 September 1981, IOB cabled the Philippine Banks to say that the Del Pan Certificates were not certificates of analysis issued by an independent laboratory. *h*

On 29 September 1981, the Philippine Banks sent to IOB sets of documents issued by Camino Chemicals Inc dated 11 September 1981. One of the four similar laboratory reports (the Camino certificates) certified as follows: *i*

Camino Chemicals Inc.

Laboratory Report

11 September 1981

Result Of Analysis

Article	:	Philipine Cochin Type Of Coconut Oil In Bulk
Submitted By	:	R J Del Pan Mindanao Surveyors, Inc. Marine and Cargo Surveyors 59-B Mimric Building, Sta. Ana Avenue Davao City, Philippines
Identification Marks On Sample	:	Composite Sample Taken From Unicom/Legoil-(Davao Plant) Shore Tank No. 4 Re: Unicom/Legoil Cochin Type Of Coconut Oil Loaded On The MT "Rich Star" Voy. No. 1
Result	:	FFA. (as Oleic) - 0.1219% (as Lauric)- 0.0865% Moisture & Impurities - 0.069 % Color: (Lovibond 5 1/4") Red- 0.6 Yellow - 5.0 Iodine Value 8.33 Solid Impurities NIL Note: The oil is free from contamination and sea water.
Remarks	:	The result given relates only to the sample submitted and tested.

Analyzed by:
Sgd. Jejette Maja Camino
Laboratory Technician

Certified Correct
Sgd. Jose Calvin M Camino
Chemical Engineer
Registration No. 1991
P T R No. 9547168 A
Date: 9 January 1981

On 1 October 1981, IOB wrote to Patel stating that the Camino certificates had been forwarded to them by the negotiating banks and they enclosed copies of the certificates. They also enquired in their last paragraph:

> Please advise per return whether the documents are now acceptable to you to enable us to advise the negotiating banks.

On 7 October 1981, Patel wrote a letter to IOB in which they took the following stand:

> Since the documents originally forwarded for payment under the letters of credit were defective due to discrepancies, the beneficiary is not entitled to demand payment under the said letters of credit, subsequently forwarding the documents to set right the discrepancies. Hence, you are requested to return the documents without affecting payment.

Pursuant to the request of Patel, on 10 October 1981, IOB sent certificates cables to the Philippine Banks acknowledging receipt of the of analysis of the independent laboratory in triplicate but stating that their drawees advised that the documents were not acceptable because of late presentation.

On 13 October 1981, the Philippine Banks by cables pointed out that the new documents had been presented in time as the negotiation period had been extended to 15 October 1981. On the next day, IOB wrote the following letter to Patel in which it seems to me, they made crystal clear their position:

14 October 1981.

M/s. Patel Holdings Pte Ltd.,
Suite 2705-8, 27th Floor,
OCBC Centre, Chulia Street,
Singapore 0104

Dear Sirs,

Re: Documents under LC No.'s PM. 110681 for US$149,250/- and US$2,486,34829 and PM. 120281 for US$597,420.98

With reference to your letter HKS/mn dated 7 October 1981, we have to advise you that the certificate of analysis of independent laboratory in triplicate as called for under the terms of the letter of credit have been submitted to us within the validity period of the letters of credit and as such we have no ground for rejecting the documents. Under the circumstances, we have no alternative but to effect payment to negotiating bank. This is in confirmation of telephonic conversation of date with Mr. H.K. Subramaniam. Please arrange to retire the documents at the earliest.

Yours faithfully,
(Sgd.)
(A. Subbiah)
Manager

On 16 October 1981, after the negotiation period, Patel wrote to IOB, to return the documents for the following discrepancies:

A. The reasons already brought to your notice *vide* our letter dated 7 October 1981.

B. At the time of submitting fresh documents to rectify the discrepancies originally pointed out, the bills of lading have become stale and non-negotiable.

C. The documents, namely, the laboratory report submitted subsequently is not the one called for under the letters of credit the letters of credit specifically called for "certificate of analysis and not mere "laboratory report. Hence, the terms of the credit have not been complied with even at a subsequent stage.

D. The laboratory report is one of describing Philippines Crude Coconut Oil in Bulk" and "Philippines Cochin Type of Coconut Oil in Bulk" and not for the specifications for "Cochin Type Coconut Oil" or "Crude Coconut Oil" for which certificate of analysis were called for under letters of credit.

On 20 October 1981, IOB sent cables to the Philippine Banks rejecting the documents as they did not comply with the letters of credit on account of the following discrepancies:

AA LC CALLS FOR CERTIFICATE OF ANALYSIS WHEREAS DOCUMENT SUBMITTED IS LABORATORY REPORT

BB COMMODITY SHIPPED IS SPECIFIED AS PHILIPPINE CRUDE COCONUT OIL IN THE SAID LAB REPORT WHEREAS LC CALLS FOR COCHIN TYPE COCONUT OIL

CC UNDER "SPECIFICATIONS" LC CALLS FOR

FFA (AS LAURIC ACID) 0.1% MAX.

WHEREAS LAB REPORT RESULT SHOWS

FFA(AS OLEIC)	2.345%
(AS LAURIC)	1.663 %
FFA (AS OLEIC)	2.8135%
(AS LAURIC)	1.9954%
FFA (AS OLEIC)	0.1219%
(AS LAURIC)	0.0865%

As to what happened to the shipment of the coconut oil can be stated shortly. Before the Rich Star arrived in Singapore Patel gave to Aru Shipping Agencies Pte. Ltd. in Singapore, the agents of Uemura, a letter of indemnity dated 18 September 1981. Under this letter Patel agreed to hold Uemura harmless from the consequences of letting them have the bills of lading in respect of the 6,001 metric tons of coconut oil. By the letter Patel also undertook to surrender the original bills of lading when they had received them from IOB. Accordingly, the bills of lading were released by Aru Shipping Agencies Pte Ltd to Patel some time between 18 and 24 September 1981.

The Rich Star arrived in Singapore on 20 September 1981. From Singapore the vessel went via Karachi to the port of Kandla in India; there, between the 4 October and 16 November the coconut oil cargo was discharged.

On 24 September 1981, Patel presented to IOB the bills of lading which they had obtained from Aru Shipping Agencies in respect of shipment on the Rich Star and other shipping documents for collection under letters of credit issued in favour of Patel by Punjab National Bank and Punjab Sind Bank. On or about 5 October 1981, IOB negotiated the documents and subsequently received the payments due under those letters of credit.

I now turn to the pleadings. In the statement of claim, Unicom claimed against IOB for breach of its obligations and undertakings under the letters of credit on the grounds that IOB had wrongfully refused to accept the documents evidencing the shipment and had refused to negotiate and/or to make any payment under the letters of credit to Unicom. They claimed the sums of US$2,635,598.29 and US$597,420.98 and interest.

IOB in their defence alleged that Unicom's documents relating to the shipment of Coconut oil had failed to conform with the terms and conditions of the letter of credit established by them. IOB gave these particulars:

(a) the letters of credit required presentation of certificates of analysis of the coconut oil from an independent laboratory but what was produced were laboratory reports;

(b) the letters of credit specified for shipment of Cochin Type Coconut Oil and/or Crude Coconut Oil; instead, the documents described the oil shipped as Philippine Crude Coconut Oil; and

(c) the lauric acid content disclosed in the said laboratory reports proceeded the maximum permissible percentage of lauric acid specified in the letters of credit (abandoned at the trial); and that the reports disclosed the presence of oleic acid in the oil, which substance the letters of credit were silent on.

Further, IOB asserted that, as the letters of credit expressly provided that they were subject to the Uniform Customs and Practice for Documentary Credit (1974 Revision) (the UCP Rules), by reason of the disconformities described above, they were lawfully entitled to and did reject the acceptance of the set of documents, and refused to negotiate and/or make payment under the letters of credit, by virtue of the provisions of Articles 7 and 8(c) of the UCP Rules.

In the reply, Unicom's answers to the issues raised by IOB were that:

(a) the certificates of analysis which were tendered to IOB each entitled "laboratory report" were in fact and substance certificates of analysis which conformed in every material particular with the requirements of the letters of credit;

(b) whilst the certificates of analysis indicated FFA (as oleic acid), and the letters of credit did not stipulate that the certificates of analysis were required to show this alternative measurement of the FFA content, the presence of the alternative measurement was irrelevant to the allegations of IOB to accept the certificates of analysis, which conformed in all material aspects with the requirements of the letters of credit; and

(c) though the documents tendered to IOB described the oil shipped as Philippine Crude Coconut Oil and the letters of credit had specified that the documents to be tendered thereunder were to evidence the shipment of, *inter alia*, Crude Coconut Oil, the documents were wholly in conformity with the requirements.

Later, the reply was amended to raise further answers to the defence of IOB. One was estoppel by reason of the previous course of dealing: that Unicom had in previous shipments presented documents entitled "Laboratory Reports" which IOB had accepted as conforming to letters of credit, similar to those in the present case. Therefore, IOB were estopped from contending in this case that the documents were not acceptable. Another was estoppel/waiver by reason of IOB's conduct in relation to the shipment in dispute. Unicom maintained that the alleged disconformities were objected to by IOB only after the expiry of the date for negotiation of the documents under the letters of credit despite that IOB had the opportunity to notify Unicom of them earlier. Therefore, IOB had waived any right to object to the said documents and IOB were estopped from going back upon their representation to allege that the documents were unacceptable.

From the foregoing, it is clear that the main issue was whether there was non-conformity of the documents to the letters of credit in respect of the shipment of the coconut oil. The other issues of waiver and estoppel would only arise for consideration if the answer to the main issue was in the affirmative. There was also an issue on the calculation of the interest Unicom should get, if they succeeded in their claim.

To prove their claim that the documents plainly conformed to the letters of credit, Unicom called 5 witnesses.

The first witness was Mr. D J Riordan, a banker with over 24 years of banking experience, who said he was very familiar with the banking practice of documentary credits. To him, the Camino certificates were "fully acceptable". Looking at one of the letters of credit, he said that it calls for a certificate of analysis which among other things outlines the analysis required; the Camino certificate gives the analysis as exactly called for.

As for the description of the "Article" in the Camino certificate as "Philippine Cochin type of coconut oil", Mr. Riordan's opinion was that from the description of the goods in the letter of credit, the addition of the word "Philippines" does not affect the acceptability of the Camino certificate. He gave two reasons: he can identify the goods described in the Camino certificate as the goods called for in the letter of credit; and, if it was the intention that the word "Philippine" should not appear in the Camino certificate, then it should have been so stated in the letter of credit.

On the topic of 'FFA (as oleic)', he said that information in the Camino certificate which is not stated as required in the letter of credit was additional information which, as a banker, to him was irrelevant for the reasons he had already given.

On another topic, Mr. Riordan said that it is accepted practice in documentary credit operations to outline all discrepancies at one time; in other words, if documents are refused for certain specified discrepancies which is later rectified, then the same documents cannot subsequently be referred for other further discrepancies. According to him, it was a practice built on convention.

In cross-examination, Mr. Riordan explained that he was not in Court on a subpoena, but on a request of the solicitors for Unicom. His bank has normal correspondence relationship with United Coconut Planters Bank in the Philippines and a very long standing relationship with IOB.

In answer to Counsel for IOB, Mr. Riordan said that he did not have a degree in banking, as in his time there was no first degree in banking; he has a Bachelor in Economics. His expertise is based purely on banking experience. He agreed that he has not made a special study in law concerning documentary credits and that the subject is highly technical and complex. He was however very familiar with the UCP and ICC rules which governed documentary credit operations and had read many cases on this subject.

When shown the Del Pan certificate, Mr. Riordan gave as his view that it did not fulfil the requirements of Clause 4 in the letter of credit. This was because the certificate said that the samples of the coconut oil that were taken were to be sent to an independent chemist for analysis. He was therefore led to believe that Del Pan is not an independent chemist which was called for in the letter of credit. He wanted the certificate of an independent chemist.

The second witness, Mr. J T Sutter, a specialist in tropical oil, works for Cargill in Singapore. Cargill is an American agricultural commodity trading and processing firm, reputed to be the largest company in this field in the world.

As lots of the tropical oil bought and sold by Cargill is by documentary credit, Mr. Sutter said he was very familiar with the subject. He said that in the trade, one looks to see that the oil has been analysed by an independent third party who commands respect, and as to whether the specification meets those under the contract. Having examined the relevant documents in this case, he was of the opinion that the Camino certificates complied with the requirements of the letters of credit.

As for the acids of oleic and lauric, Mr. Sutter said they are analogous to F° and C°. They are descriptive terms of measurements of FFA content. The fact that both were stated in the Camino certificate made no difference to him. Both described the free fatty acid content which is the impurity in the oil.

The third witness, Mr. J C M Camino is a chemical engineer with 20 years of experience in analysis of agriculture products and other chemicals. He and his wife, Josette Maja Camino, own Camino Chemicals Inc. in the Philippines. The analysis of the samples of coconut oil had been made by his wife who is also a chemical engineer; she was not, however, registered to issue certificates of analysis. Mr. Camino who was so registered had certified the Result of Analysis. He identified his signatures on the Camino certificates. Mr. Camino testified that "previously nobody questioned" his reports.

He also explained FFA. He said that free fatty acid is a measurement of the quality of the coconut oil. Where there is more free fatty acid the oil is less pure. Oleic is unsaturated acid whereas lauric is saturated acid, but both are used to express the FFA. The two acids, he said, are analogous to the measurements of F° and C°. One can convert from oleic to lauric and *vice versa*.

The fourth witness, Mr. Anselmo Bernad, a businessman in the Philippines, deals in copra and coconut oil. He has been in the trade since 1970. At the material time he was the vice president of Unicom in charge of co-ordinating the marketing activities of the company.

The gist of his evidence was that there had been earlier shipments of coconut oil on the vessels, "Oriental Swallow" and "Shoun Mara No. 6"; that documents similar to those in the present case were submitted to IOB for negotiation; that those documents had been accepted and that payments were made by IOB on them. On the documents relating to the present dispute, he confirmed that they were all in order and were presented in time in compliance with the requirements of the letters of credit.

On the Camino certificates, Mr. Bernad said that if IOB had wanted the heading "Certificate" instead of "Laboratory Report", or the reference to oleic and the word "Philippine" left out, Onicom would have obliged IOB, Camino Chemicals Inc would have been instructed to do so, and the new documents would have been immediately sent to IOB.

As for the reference to oleic in the Camino documents, he said that it was additional information. It was common practice in the Philippines to put FFA in both lauric and oleic terms. He confirmed that it was so stated in the certificates given for the earlier shipments.

The last witness, Mr. H Zayco, a consultant chemical engineer, has been in the coconut oil trade for more than 40 years. He had been for 33 years with Unilever in the Philippines and had retired as its chairman. He gave expert evidence on "oleic" and "lauric". He tendered a written statement.

Briefly, the statement states that all vegetable oils, as a natural part in the oils, contain several fatty acids, including lauric and oleic. Lauric is a saturated acid and oleic is an unsaturated acid. Of the fatty acids in coconut oil, on average 40% is lauric and 6% is oleic. When oil deteriorates (either naturally or otherwise), some fatty acid is released and becomes known as free fatty acid (FFA) The FFA content of the oil can be expressed either as lauric or as oleic. These standards of measurement are convertible from one to the other by the ratio 282:200, just as temperature is measured in centigrade and fahrenheit and can be converted by a formula one to the other. The standard of measurement usual in the US for coconut oil is oleic whereas in Europe it is lauric. When a chemist tests for the FFA content of oil, he tests according to either the oleic or the lauric standard of measurement and when he has determined one, he can by the use of the ratio convert it to the other.

Mr. Zayco also gave as his opinion that there was nothing misleading in the Camino Certificates.

For the defence, the only witness for IOB was Mr. M Subramaniam. He has been with IOB for more than 23 years. At the material time he was head of the imports division which deals with documentary credits relating to goods imported into the country by IOB's clients. At that time, he reported to the sub-manager, Mr. V Rajagopal and to the manager, Mr. Subbiah. Mr. Rajagopal has since resigned and is living in India. Mr. Subbiah is now the chief manager of the New Delhi Branch of IOB.

Mr. Subramaniam said that as Patel was one of the major customers of IOB, he closely supervised or personally handled the bills of exchange and import documents relating to the shipments of coconut oil by Unicom for Patel. His evidence-in-chief was mainly of explanations and comments on the relevant documents and as to how they were dealt with by IOB, with Patel and the Philippine Banks. He said that he rejected the Del Pan Certificates as they were not issued by an independent laboratory. Later, when he received the Camino Certificates, he personally checked them with the relevant letters of credit. This time he found three discrepancies, and they are the three which IOB have raised in their defence.

Mr. Thomas cross-examined Mr. Subramaniam at some length. At the end of it, it was clear to me, and this is borne out in the notes of evidence that Mr. Subramaniam's credit was visibly shaken in the process. Here, I can deal with his evidence shortly.

Mr. Subramaniam was shown the letter of 7 October 1981 from Patel to IOB in which Patel rejected the Camino Certificates on the ground that Unicom was not entitled to put right the Del Pan Certificates. His attention was drawn to the handwritten note of IOB's manager, Mr. Subbiah, around the margins of this letter. The note contains instructions for the sub-manager, Mr. Rajagopal. It reads as follows:

> S M
>
> However, tell the party (Patel) that they "(Negotiating Bank)" have the possibility to putting the documents in order. Provided this was done before expiry of the credit and the documents are presented within the time allowed under Article 41 of UCP and (*sic*) documents comply with L C terms.

These instructions were dated 9 October. It was after that, that IOB's letter of 14 October was sent to Patel. It bears repetition for Patel was told in this letter that as "the certificate of analysis of independent laboratory in triplicate as called for under the terms of the letter of credit have been submitted to us within the validity period of the letters of credit we have no ground for rejecting the documents. Under the circumstances, we have no alternative but to effect payment to negotiating bank".

Now, on the handwritten note, Mr. Subramaniam agreed with Mr. Thomas that Mr. Subbiah had said in it that Unicom can put right the documents within the negotiation period and that Patel's objections to the documents were not good ones. He also agreed with Counsel that there is nothing in that note (or in any other document) about the discrepancies having been raised by IOB as claimed by him. Yet, Mr. Subramaniam would not agree with the contents of IOB's letter of 14 October. He sought to explain that though Mr. Subbiah knew of the discrepancies in the documents, the letter was sent to Patel because it was the practice among the banks to pursue matters with the buyer for the retirement of the documents to solve the problems of unpaid bills, and also to avoid unpleasantness with the negotiating banks. It was an astonishing explanation. Indeed, when he gave this evidence, it seemed to me, having been confronted with the letter, he was hopelessly trying to wriggle out of the situation where his oral evidence was clearly contrary to documentary evidence. Needless to say, there was no other evidence of any banking practice as stated by him. I rejected his explanation.

I would add one last word on his evidence. In cross-examination, Mr. Subbiah conceded that IOB had to pay Unicom if the documents conform to the letters of credit. On this, he was pointedly asked:

> Q. If the Bank has documents which the Bank thinks has no discrepancies, the Bank has to pay?
>
> A. Yes.
>
> Q. Even if the buyer thinks there are discrepancies?
>
> A. No, because when we receive the documents the Bank thoroughly checks the documents and if there is any discrepancy not acceptable to the buyer, the Bank won't pay the money.
>
> Q. Assume that the Bank thinks that there are no discrepancies But that buyer thinks there are. The Bank thinks that the buyers are wrong. The Bank must pay?
>
> A. The Bank should clarify the discrepancies with the buyer. After that the Bank, I agree, must pay.

When it came to submissions, I was referred to Articles 7, 8 and 32(c) of the UCP Rules. The relevant provisions in these rules are these:

Article 7

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

Article 8

a. In documentary credit operations all parties concerned deal in documents and not in goods.

b. Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a bank authorised to do so, binds the party giving the authorisation to take up the documents and reimburse the bank which has effected the payment, acceptance or negotiation.

c. If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit.

d. The issuing bank shall have a reasonable time to examine the documents and to determine as above whether to make such a claim.

Article 32

c. The description of the goods in the commercial invoice must correspond with the description in the credit. In all other documents the goods may be described. In general terms not inconsistent with the description of the goods in the credit.

On the law, the thrust of the argument of Mr. Wu was that in a documentary credit transaction, as the parties to it deal in documents and not in goods, *the documents tendered must conform strictly to the terms of the documentary credit* (Emphasis added.) For this I was deferred to a passage in the textbook documentary letters of credit by E P Ellinger at p. 279:

It is elementary that the documents must conform strictly to the terms of the documentary credit. The tender must include that which has been stipulates: nothing else should suffice. This is most clearly laid down in England.

Let me say straightaway that I agree with the statement of law in this passage but not with the emphasis that was sought to be put on it for IOB that it means literal compliance. As the author recognises, the doctrine of strict compliance explanation in many cases on both sides of the Atlantic and applied in civil law systems in Europe now provides for in Article 8 of the UCP Rules On this, at p. 281 of the textbook the author has correctly summarised the requirements of strict compliance:

Basically, it means that all the specified documents must be tendered and that all of them must be of the kind required. If all the documents conform to the terms of the documentary credit, the party who tenders them has discharged his duty. It is irrelevant that the goods themselves can be proved to be of an inferior quality or type. On the other hand, if the documents tendered do not comply with the terms of the credit, the tender is at fault. It is of no avail to claim that, despite the bad tender, the goods are of the contractual quality.

In the course of his submission, Mr. Wu referred to five cases: *Rayner v. Hambro's Bank Ltd* [1943] I KB 37; *Bank Melli Iran v. Barclays Bank* [1951] LLLR Vol. 2 367; *Midland Bank v. Seymour* [1955] LLLR Vol. 2, 147; *Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty Ltd.* [1973] AC 279; and *Overseas Union Bank Ltd. v. Chua Teng Hwee* [1964]

30 MLJ 165. These cases were cited to persuade me that the tests of disconformity applied in those cases were application to the present case. I do not propose to review these cases in this judgment because, as was submitted by Mr. Thomas, not only are the statements in them best considered in relation to their facts, but more to the point the cases are not helpful to me as they predate the UCP rules or concerned letters of credit not subject to the UCP Rules.

In dealing with the facts, Mr. Wu submitted, that the Del Pan Certificates were not from an independent laboratory as required under Clause 4 of the contract. It was, therefore, not permissible for Unicom to present these documents to IOB when what was required were certificates of analysis. It was said that if IOB should treat the documents as certificates of analysis, then IOB would have acted out on a limbo. I agreed with him.

On the Camino Certificates, three objections were taken for IOB: (a) the title "Result of Analysis"; (b) the addition of the word "Philippines,; and (c) the reference to "oleic". Whilst it was conceded that (b), the appearance of the word "Philippine" may be considered as borderline, it was submitted that any one single disconformity would suffice to defeat the claim of Unicom. On the inclusion of the word "Philippine", it was argued that there was an inconsistency in the documents within the meaning of Article 7 and Article 32(c) of the UCP rules. And, because there must be strict compliance, the benefit of doubt must be given to IOB. As regards the other two discrepancies, it was maintained that they were clear disconformities on the face of the documents because a "Laboratory Report" which is in the heading of the Camino Certificate is not exactly the same as a "Certificate of Analysis". As there was a duty on IOB to make a distinction in substance of the documents, IOB had made out a case of disconformities on the face of the documents and that was all that they were required to do.

In concluding his submission, Mr. Wu sought to minimise the impact of Mr. Subramaniam's evidence. He offered an explanation as to why Mr. Subramaniam was called and as to why he was the only witness for IOB. Counsel said that on the main issue this case will in the end be decided on the documents. Mr. Subramaniam was simply called to prove the documents and to explain the administration within IOB. There was no reason, he said, to call any other witness because it was very clear from the documents that IOB had acted at all times in a manner consistent with the position taken by their clients, Patel. So, whilst this was a case of fraud perpetrated by Patel, there was nothing wrong with the position taken by IOB, which was that it followed Patel's instructions and adopted Patel's stand that the documents did not Conform to the letters of credit.

For the closing address, Mr. Thomas gave me lengthy notes of submissions. He submitted that on the main issue there was overwhelming evidence that the documents plainly conformed or complied with the requirements of the letters of credit. On the facts which he said are largely not in dispute, Unicom's primary case rests on the Camino Certificates. The oral evidence of Mr. Riordan and the documentary evidence of what Mr. Subbiah and Mr. Rajagopal of IOB had done made clear that as experienced banks they had all considered that on their face the Camino Certificates strictly complied with the letters of credit. As neither Mr. Subbiah nor Mr. Rajagopal were called to give evidence, the inevitable inference must be that both these men who had accepted that the documents conformed still hold the view.

On the submission for IOB, that they were obliged to check with Patel on the documents, Mr. Thomas said that this is not correct for it was IOB that must decide on the documents. He went on to say that even if IOB's contention is right, it cannot assist them as from the consultations between Patel's managing director and Mr. Subbiah and Mr. Rajagopal, one can properly infer from the correspondence, particularly from Patel's letter of 7 October that IOB were told by Patel that the documents were acceptable.

Mr. Thomas analysed the evidence of Mr. Subramaniam. He said that his evidence that he found three discrepancies in the Camino Certificates on 1 October and reported this to Patel must be rejected either because he has confused matters in his mind, or because it is untrue, or because the points were plainly rejected as wrong by IOB. In summary, Counsel said:

(i) His evidence was entirely inconsistent with the documents as no document raises the points he relied on until Patel raised the points in their letter of 16 October, after the negotiation period.

(ii) If he raised the points as he said he did with Patel, it is inconceivable that Patel would have written on 7 October to IOB taking a bad point on late presentation and accepting in that letter that the Camino documents conformed.

(iii) If he had raised the points as he said he did, then IOB would not have sent the telexes to the negotiating banks on 10 October or spoken to Patel on 13 October or written to them on 14 October in the terms they did. If Mr. Subramaniam was right, IOB would then have been acting improperly both to the negotiating banks and their own client.

At the conclusion of the case, on a review of the evidence, I accepted the submissions made for Unicom. I found as a fact that the Camino Certificates were "certificates of analysis issued by an independent laboratory". They certified that the shipment of coconut oil had been analysed in the manner required by the letters of credit, and accordingly, strictly conformed to the contract. This was the view of Mr. Riordan, an independent expert witness on banking practice and the view of Mr. Sutter, a trader who was responsible for a very substantial trade in tropical oil. I had no reason to differ with them. To my mind, it was a specious argument that because the Camino Certificate was entitled "Result of the Analysis" it was not a "Certificate of Analysis". In my view the matter is put beyond doubt when one sees that the "Result of Analysis" had in fact been certified by Mr. Jose Calvin M Camino, the chemical engineer authorised to give certificates of analysis. In any event, IOB had accepted at that time the Camino Certificates as Certificates of Analysis. So, clearly there was no merit in the stand taken by IOB in these proceedings.

As for the word "Philippine" in the description of the coconut oil in the Camino Certificates, I was of the view that it was additional information which does not affect the validity of the documents. Besides the expert evidence given for Unicom, there was the evidence of Mr. Subramaniam that because of Article 32(c) of the UCP Rules, the word "Philippine" was acceptable as the commercial invoices in this case all referred to the goods shipped in exact conformity with what was required in the letters of credit. That being the evidence, the words "Philippine Crude Coconut Oil" and "Philippine Cochin Type of Coconut Oil" which are the descriptions in the Camino Certificates are plainly not inconsistent with the requirements in the letters of credit.

For the same reasons IOB's contention that the Camino Certificates did not conform to the letters of credit as they referred to FFA "as oleic" was also wrong.

Accordingly, I gave judgment for Unicom together with interest at the prevailing rate as claimed in the amended statement of claim.

Also found at [1991] 3 CLJ 2345